Local 688, International Brotherhood of Teamsters, AFL–CIO (Ravarino & Freschi, Inc.) *and* Donald O. Gibson. Case 14–CB–7794

April 6, 1999

DECISION AND ORDER

BY MEMBERS FOX, LIEBMAN, AND HURTGEN

On December 21, 1992, Administrative Law Judge Stephen J. Gross issued the attached decision. The Respondent and the General Counsel filed exceptions and supporting briefs, and the Charging Party filed cross-exceptions and a supporting brief. The Charging Party additionally filed a brief answering the exceptions of the Respondent and the General Counsel.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

The Board has considered the decision and the record in light of the exceptions, cross-exceptions, and briefs and has decided to affirm the judge's rulings, findings, and conclusions only to the extent consistent with this Decision and Order, and to adopt the judge's recommended Order as modified and set forth in full below.[1]

The judge found, and we agree for the reasons set forth by him, that the Respondent violated Section 8(b)(1)(A) of the Act by threatening Charging Party Donald O. Gibson with discharge unless he became a member of the Union and signed a dues-checkoff authorization form. The judge dismissed, however, the complaint allegations that the Respondent violated Section 8(b)(1)(A) of the Act by failing to notify Gibson of his *Beck* rights, and by failing to provide him with an accounting disclosing the portion of dues expended by the Respondent on nonrepresentational activities. We reverse these findings of the judge in light of the Board's decision in *California Saw & Knife Works*, 320 NLRB 224 (1995), enfd. sub nom. *Machinists & Aerospace Workers v. NLRB*, 133 F.3d 1012 (7th Cir. 1998), cert. denied sub nom. *Strang v. NLRB*, 525 U.S. 813 (1998).

In *Communications Workers v. Beck*, supra, the Supreme Court held that the National Labor Relations Act does not permit a collective-bargaining representative, over the objection of dues-paying nonmember employees, to expend funds collected under a union-security agreement on activities unrelated to collective-bargaining, contract administration, or grievance adjustment.[2] In *California Saw & Knife Works*, the Board found that the union violated its duty of fair representation by failing to provide notice of *Beck* rights to unit employees covered by a union-security agreement who were not members of the union. The Board held that:

> when or before a union seeks to obligate an employee to pay fees and dues under a union-security clause, the union should inform the employee that he has the right to be or remain a nonmember and that nonmembers have the right (1) to object to paying for union activities not germane to the union's duties as bargaining agent and to obtain a reduction in fees for such activities; (2) to be given sufficient information to enable the employee to intelligently decide whether to object; and (3) to be apprised of any internal union procedures for filing objections.[3]

The Board further clarified that if a nonmember employee chooses to file a *Beck* objection, the employee must be apprised of the following additional information by the union: the percentage of the reduction in fees for objecting nonmembers, the basis for the union's calculation, and the right to challenge these figures.[4] The purpose of providing objectors with this additional information is to allow an employee to decide whether there is any reason to mount a challenge to the union's dues reduction calculations.[5]

The Board explained that these notice requirements furnish significant protection to the interests of the individual nonmember unit employee vis-a-vis *Beck* rights, without compromising the countervailing collective interests of bargaining unit employees in ensuring that every unit employee contributes to the cost of collective bargaining. The Board further emphasized that a union is afforded a wide range of reasonableness under the duty of fair representation in satisfying its notice obligation.[6] A union meets its notice obligation as long as it has taken reasonable steps to insure that all employees whom the union seeks to obligate to pay dues under a union-security clause are given notice of their *Beck* rights.[7]

The record establishes that at the time the Respondent, through its shop steward Brannam, directed Charging Party Gibson to sign an application for union membership and a dues-checkoff authorization form, and thereby sought to obligate him to pay fees and dues under the union-security clause, the Respondent failed concomitantly to notify him of his *Beck* rights. The Respondent accordingly failed to comply with the rule set forth in *California Saw & Knife Works* requiring that *Beck* notice be given to an employee when or before a union seeks to obligate that employee to pay fees and dues under a un-

[1] We have modified the judge's recommended Order to reflect our findings, set forth infra, that the Respondent unlawfully failed to provide the Charging Party with notice of his rights under *Communications Workers v. Beck*, 487 U.S. 735 (1988), and failed to provide him with *Beck*-related financial information. We shall further modify the judge's recommended Order to comport with our decision in *Indian Hills Care Center*, 321 NLRB 144 (1996). We shall also issue a new notice to employees and members which reflects these modifications.

[2] 487 U.S. at 752–754.

[3] *California Saw & Knife Works*, supra, 320 NLRB at 233.

[4] Id.

[5] Id., 320 NLRB at 239–240.

[6] Id., 320 NLRB at 235.

[7] Id., 320 NLRB at 233.

ion-security clause, and thereby violated Section 8(b)(1)(A). Id., 320 NLRB at 233.

The record further establishes that, upon receiving Gibson's *Beck* objection, the Respondent failed to provide him with information to allow him to decide whether to mount a challenge to the Union's dues reduction calculations, as we have required in *California Saw & Knife Works*. The judge nevertheless concluded that the Respondent did not act unlawfully because, after receiving Gibson's *Beck* objection, the Respondent never sought to collect any dues or fees from Gibson, and there were no further communications—in either direction—between Gibson and the Respondent after he filed his *Beck* objection. We cannot agree with the judge's conclusion.

In *Laborers Local 265 (Fred A. Nemann Co.)*, 322 NLRB 294 (1996), the Board held that a union did not breach its duty of fair representation by failing to provide a *Beck* objector with *Beck*-related financial information, where the union waived entirely the objector's obligations under the union-security clause and informed her that she would not be required to pay any dues or fees. The Board found that the union's affirmative waiver of the payment of any fees by the objector mooted a challenge by her to the union's dues-reduction calculations and made unnecessary the provision to her of financial information. The Board explained:

> the underlying purpose for providing *Beck* objectors with financial information is to allow an objector to decide whether there is any reason to mount a challenge to the union's dues reduction calculations. There can, however, be no dispute regarding the correctness of the fees charged by a union to a *Beck* objector when no payment of fees is required. Absent any dispute regarding the correctness of a union's calculations, a challenge by an objector to those calculations is rendered superfluous.[8]

In contrast to *Laborers Local 265*, however, the Respondent here did not notify the Charging Party that it was affirmatively waiving his obligations under the union-security clause. Rather, the Respondent failed to communicate at all with the Charging Party following his *Beck* objection. The Charging Party was accordingly left uncertain whether he would be charged a proportionate share of dues as a *Beck* objector, what that proportion would be, and whether he might need to file a challenge to the dues reduction calculation. Furthermore, the Respondent has not advanced any credible reason for its silence. We find that by leaving a *Beck* objector in the dark regarding his union-security obligations and hence his potential need for *Beck*-related financial information, the Respondent engaged in arbitrary conduct violative of the duty of fair representation. In so concluding, we emphasize the minimal burden placed on a union by our holding today: to inform a *Beck* objector of the waiver of union-security obligations. Thus, a union may, under the wide range of reasonableness afforded a union in satisfying the requirements of *Beck*, satisfy its obligation to provide *Beck*-related financial information by waiving the objector's obligations under a union-security clause. We simply hold that a union acts in an unlawfully arbitrary manner by failing to inform the objector of its decision to waive the union-security obligations.

Finally, we address the complaint allegation that the Respondent maintained an unlawful union-security clause in its collective-bargaining agreement with the Employer. The General Counsel and the Charging Party argue that the union-security clause, which requires that employees become and remain members in good standing in the Union, is unlawful on its face.[9] They argue that the negotiation and maintenance of a union-security clause is unlawful, unless the clause expressly explains the Supreme Court's interpretation of Section 8(a)(3) of the Act set forth in *Communications Workers v. Beck*, supra, and *NLRB v. General Motors Corp.*[10] The Court held in *General Motors* that under Section 8(a)(3) the only "membership" obligation that a union can require is the payment of fees and dues, and as discussed at length above held in *Beck* that Section 8(a)(3) allows unions to collect and expend funds over the objection of nonmembers only to the extent they are used for collective bargaining, contract administration, and grievance adjustment activities.

The Supreme Court by unanimous decision in *Marquez v. Screen Actors Guild*, 525 U.S. 33 (1998), recently rejected the argument presented here asserting the facial invalidity of the union-security clause. The Court in *Marquez* explained that Section 8(a)(3) of the Act permits unions and employers to negotiate an agreement that requires union "membership" as a condition of employment for all employees.[11] The Court held that a

[8] Id. at 296.

[9] The union-security clause provides, in pertinent part:

It is understood and agreed by and between the parties hereto that as a [condition] of continued employment, all persons who are hereafter employed by the Employer in the Unit which is the subject of this Agreement shall become members of the Union not later than the thirty-first day [following] the beginning of their employment . . . that the continued employment by the Employer in said unit of persons who are already members in good standing of the Union shall be conditioned upon those persons continuing their payment of the periodic dues of the Union . . . the failure of any person to maintain his Union membership in good standing as required herein shall, upon written notice to the Employer by the Union to such effect, obligate the Employer to discharge such person.

[10] 373 U.S. 734, 742 (1963).

[11] Sec. 8(a)(3) provides in pertinent part:

It shall be an unfair labor practice for an employer—(3) by discrimination in regard to hire or tenure of employment . . . to encourage or discourage membership in any labor organization: *Provided*, That nothing in this subchapter, or in any other statute of the United States, shall

union does not breach "its duty of fair representation when it negotiates a union security clause that tracks the language of Section 8(a)(3) without explaining, in the agreement, this Court's interpretation of that language."[12] The Court clarified that by tracking the statutory "membership" language, a union-security clause incorporates all of the refinements and rights that have become associated with the language of Section 8(a)(3) under *General Motors* and *Beck*. We accordingly find, in light of the Supreme Court's pronouncement in *Marquez*, that the complaint allegation here that the Respondent maintained a facially unlawful union-security clause is without merit, because the clause at issue tracks the "membership" language of Section 8(a)(3) of the Act. For these reasons we adopt the judge's dismissal of that complaint allegation.

AMENDED REMEDY

We shall amend the judge's recommended remedy to order the Respondent to provide notice in writing to all unit employees of their *Beck* rights, in accordance with the Board's decision in *California Saw & Knife Works*. We shall also amend the judge's recommended remedy to order the Respondent to provide notice in writing to Charging Party Donald O. Gibson that it has waived his obligations under the union-security clause for the period covered by the complaint and that it will not require him to pay dues or fees for that period.[13]

ORDER

The National Labor Relations Board adopts the recommended Order of the administrative law judge as modified and set forth in full below and orders that the Respondent, Local 688, International Brotherhood of Teamsters, AFL–CIO, St. Louis, Missouri, its officers, agents, and representatives, shall

1. Cease and desist from

(a) Threatening employees with discharge if they do not become a member of the Union and sign a dues-checkoff authorization form.

(b) Failing to notify employees of their *Beck* rights when it first seeks to obligate them to pay fees and dues under a union-security clause.

(c) Failing (1) to provide employees who have filed a *Beck* objection with information to allow the objecting employees to decide whether to mount a challenge to the Union's dues reduction calculations, or (2) to notify them that it is waiving entirely their obligations under the union-security clause and that it will not require them to pay any dues or fees.

(d) In any like or related manner restraining or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) Notify all bargaining unit employees of their rights under *Communications Workers v. Beck*, 487 U.S. 735 (1988), including that they have the right to be or remain a nonmember and that nonmembers have the right to object to paying for union activities not germane to the union's duties as bargaining agent and to obtain a reduction in fees for such activities. In addition, this notice must include sufficient information to enable the employee to intelligently decide whether to object, as well as a description of any internal union procedures for filing objections.

(b) Notify Donald O. Gibson in writing that, as of the date he filed his *Beck* objection, it has waived entirely his obligations under the union-security clause for the period covered by the complaint, and that it will not require him to pay any dues or fees for that period.

(c) Within 14 days after service by the Region, post at its business office and meeting hall copies of the attached notice marked "Appendix."[14] Copies of the notice, on forms provided by the Regional Director for Region 14, after being signed by the Respondent's authorized representative, shall be posted by the Respondent immediately upon receipt and maintained for 60 consecutive days in conspicuous places including all places where notices to employees and members are customarily posted. Reasonable steps shall be taken to ensure that the notices are not altered, defaced, or covered by any other material.

(d) Within 21 days after service by the Region, file with the Regional Director a sworn certification of a responsible official on a form provided by the Region attesting to the steps that the Respondent has taken to comply.

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preclude an employer from making an agreement with a labor organization . . . to require as a condition of employment membership therein on or after the thirtieth day following the beginning of such employment or the effective date of such agreement, whichever is the later. . . . *Provided further*, That no employer shall justify any discrimination against an employee for nonmembership in a labor organization (A) if he has reasonable grounds for believing that such membership was not available to the employee on the same terms and conditions generally applicable to other members, or (B) if he has reasonable grounds for believing that membership was denied or terminated for reasons other than the failure of the employee to tender the periodic dues and the initiation fees uniformly required as a condition of acquiring or retaining membership[.]

[12] Id., slip op. at 1.

[13] This remedy is consistent with the Respondent's position in this litigation that the reason it did not seek to collect dues or fees from Gibson after he filed his *Beck* objection was that it had waived his obligations under the union-security clause.

[14] If this Order is enforced by a judgment of a United States Court of Appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

MEMBER HURTGEN, concurring.

In *Marquez v. Screen Actors Guild*, 525 U.S. 33 (1998), the Supreme Court held that maintenance of a union-security clause which tracks the language of the NLRA does not breach a union's duty of fair representation. As the concurrence makes clear, the Court did *not* decide whether such a clause is a violation of the NLRA. 119 S.Ct. at 304. However, in the NLRA cases involving these type of issues, the Board has applied the principles of the duty of fair representation.[1] Thus, under current Board law, there is no basis for finding a violation of the NLRA.

I recognize that the clause herein reads in terms of "membership *in good standing*" (emphasis added). This language goes beyond the wording of the statute. However, the clause in *Marquez* also had "good standing" language. Further, the General Counsel does not argue that this language warrants a different result, and he does not point to any constitutional provisions or bylaws under which "good standing" is defined in ways that go beyond the payment of dues and fees. Accordingly, I do not pass on issues that would be raised if there were such a contention and showing.

APPENDIX

NOTICE TO EMPLOYEES AND MEMBERS
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

The National Labor Relations Board has found that we violated the National Labor Relations Act and has ordered us to post and abide by this notice.

WE WILL NOT threaten employees with discharge if they do not become a member of the Union and sign a dues checkoff authorization form.

WE WILL NOT fail to notify employees of their rights under *Communications Workers v. Beck*, 487 U.S. 735 (1988), when we first seek to obligate them to pay fees and dues under a union-security clause.

WE WILL NOT fail to provide employees who have filed *Beck* objections with information to allow the objecting employees to decide whether to mount a challenge to the Union's dues reduction calculations, or, if we elect not to require them to pay any dues or fees to the Union, to notify them that we have waived entirely their obligations under the union-security clause and that we will not require them to pay any dues or fees.

WE WILL NOT in any like or related manner restrain or coerce you in the exercise of rights guaranteed you by Section 7 of the Act.

WE WILL notify all bargaining unit employees of their rights under *Communications Workers v. Beck*, 487 U.S. 735 (1988), including that they have the right to be or remain a nonmember and that nonmembers have the right to object to paying for union activities not germane to the union's duties as bargaining agent and to obtain a reduction in fees for such activities. In addition, this notice will include sufficient information to enable the employee to intelligently decide whether to object, as well as a description of any internal union procedures for filing objections.

WE WILL notify Donald O. Gibson in writing that, as of the date he filed his *Beck* objection, we have waived entirely his obligations under the union-security clause for the period covered by the complaint, and that we will not require him to pay any dues or fees for that period.

LOCAL 688, INTERNATIONAL BROTHERHOOD OF TEAMSTERS, AFL–CIO

Karyn Fine, Esq., for the General Counsel.
Clyde Craig, Esq. (Craig & Craig), of St. Louis, Missouri, for the Respondent.
W. James Young, Esq. (National Right to Work Legal Defense Foundation), of Springfield, Virginia, for the Charging Party.

DECISION

STEPHEN J. GROSS, Administrative Law Judge. Teamsters Local 688 is the collective-bargaining representative of certain employees (the bargaining unit) employed by Ravarino & Freschi, Inc. (R & F).[1] Local 688 and R & F are parties to a collective-bargaining agreement covering the bargaining unit. That agreement is currently in effect. The Charging Party, Donald O. Gibson, is employed by R & F in the bargaining unit. According to the General Counsel, Local 688 violated Section 8(b)(1)(A) of the National Labor Relations Act (the Act) by: (1) telling Gibson that if he did not become a member of Local 688 and fill out a dues-checkoff authorization card, he could not work for R & F; (2) failing to notify Gibson in timely fashion of his *Beck* rights;[2] (3) failing to provide Gibson with an accounting that disclosed those portions of dues expended by Local 688 on nonrepresentational activities even though Gibson had objected to paying dues in respect to amounts spent on such activities; and (4) maintaining an unlawful union-security clause in its collective-bargaining agreement with R & F.

Local 688 denies that it violated the Act in any respect.[3]

I held a hearing in this matter on May 26, 1992.[4] Briefs have been filed by the General Counsel, by Local 688, and by Gibson.[5]

[1] See *California Saw & Knife Works*, 320 NLRB 224 (1995).

[1] The bargaining unit consists of all drivers and production employees at R & F's plant in St. Louis, Missouri, but excluding salespersons, clerical employees, supervisors, and foremen (as defined in the National Labor Relations Act).

[2] The reference is to *Communication Workers v. Beck*, 487 U.S. 735 (1988).

[3] Local 688 admits, however, that it is a labor organization within the meaning of the Act, that R & F is an employer engaged in commerce within the meaning of the Act, and that the National Labor Relations Board (the Board) has jurisdiction over this matter.

A. Does Local 688's Collective-Bargaining Agreement with R & F Contain an Unlawful Union-Security Clause

The Local 688-R & F collective-bargaining agreement contains the following union-security clause:

> It is understood and agreed by and between the parties hereto that as a [condition] of continued employment, all persons who are hereafter employed by the Employer in the Unit which is the subject of this Agreement shall become members of the Union not later than the thirty-first day [following] the beginning of their employment or the execution date of this Agreement, whichever is the later; that the continued employment by the Employer in said unit of persons who are already members in good standing of the Union shall be conditioned upon those persons continuing their payment of the periodic dues of the Union; and that the continued employment of persons who were in the employ of the Employer prior to the date of this Agreement and who are not now members of the Union, shall be conditioned upon those persons becoming members of the [Union] not later than the thirty-first day following the execution date of this Agreement. The failure of any person to become a member of the Union at such required times shall obligate the Employer, upon written notice from the Union to such effect and to the further effect that Union membership was available to such person on the same terms and conditions generally available to other members, to forthwith discharge such person, the failure of any person to maintain his Union membership in good standing as required herein shall, upon written notice to the Employer by the Union to such effect, obligate the Employer to discharge such person.

The position of the General Counsel, as expressed both in the complaint and on brief, is that the union-security clause is unlawful, because of its requirement that employees must maintain their union membership "in good standing."[6]

It is not difficult, if one puts precedent aside, to construct an argument to the effect that the union-security clause here at issue violates the Act given that a union may not lawfully require an employee to become a "member," as that term is generally understood[7] (as opposed to its *General Motors* definition),[8] and given the various meanings that can be ascribed to "in good standing."[9]

But this is not a case of first impression. And for the reasons discussed by Administrative Law Judge Karl H. Buschmann in his decision in *Polymark Corp. JD–252–92* (September 30, 1992), my conclusion is that *Keystone Coat, Apron & Towel Supply Co*., 121 NLRB 880, 885 (1958), together with cases such as *Hotel & Restaurant Employees Local 54 (Atlantis Casino)*, 291 NLRB 989 (1988), enfd. 887 F.2d 28 (3d Cir. 1989), require me to dismiss the allegations of the complaint pertaining to the claimed unlawfulness of the union-security clause set forth above.

B. The Statement by a Union Steward Concerning Union Membership and Dues Checkoff

As I interpret Gibson's undisputed testimony, several months after Gibson had become an employee of R & F, Gibson's shop steward, Jerry Brannam, said the following to Gibson, or something close to it:

> Your name is on a list, with 20 others, of employees who haven't joined the Union. If you don't join the Union, you can't work here. You have to fill out these papers.

With that, Brannam gave Gibson an application for union membership and a dues-checkoff form.[10]

The question is whether Local 688 thereby violated the Act and, if it did, in what respects. (That hinges in part on whether Brannam, in so communicating to Gibson, was acting as an agent of Local 688. My conclusion is that he was, for reasons discussed later in this decision.)

"*If you don't join the Union, you can't work here*." It can perhaps be argued that, standing alone, Brannam's statement to Gibson about having to "join the Union" in order to continue his employment with R & F is the equivalent of "you have to become a member of the Union" which, in turn, can be construed (under *General Motors*) as "you have to pay union dues" in order to continue working at R & F. And for the time being, at least, that last kind of utterance does not appear to be unlawful (where, as here, the employee had not advised the union that the employee was unwilling to become a full member of the union).[11]

But Brannam's remark was coupled with his tendering to Gibson of a membership application and a dues-checkoff form. For any reasonable employee in Gibson's position, those documents, particularly the membership application, thereby defined what Brannam meant by "join the Union." It meant, in the very least, becoming a full-fledged member of the Union. Thus the membership application stated, with exceeding specificity, that membership meant much, much more than mere payment of periodic dues. It meant, inter alia, complying with all union regulations, abiding by the International's constitution

[4] This case had originally been consolidated with Case 14–CA–21819, in which the General Counsel alleged that R & F had violated the Act in various respects. But the General Counsel and R & F entered into a settlement agreement which I approved, over Gibson's objection, and I thereafter severed that case from this one. See Tr. 14.

[5] The charge in this case was filed on February 11, 1992. The complaint is dated March 27, 1992.

[6] Gibson's position is that, even without the "good standing" language, the provision is unlawful. But the General Counsel controls the theory of the case: E.g., *Suburban Transit Corp*., 276 NLRB 15, 26 (1985); *Teamsters IBEW Local 903 (Hinton Commercial Contractors)*, 230 NLRB 1017, 1019–1020 (1977), enfd. 574 F.2d 1302 (5th Cir. 1978). And the complaint is specific in limiting the allegation of unlawfulness of the union-security clause to its inclusion of "good standing" language.

[7] See, for example, the use of "member" in the Labor-Management Reporting and Disclosure Act, 29 U.S.C. §§ 402(o) and 411(a).

[8] *NLRB v. General Motors Corp*., 373 U.S. 734 (1963).

[9] In that regard the General Counsel argues that—"the requirement that the employee must be a member in good standing clearly suggests that the employee cannot be delinquent in any respect. Thus, for example, an employee who owes money for fines and assessments would be subject to discharge."

[10] The record does not tell us what, if anything, Gibson said in reply to Brannam. The record suggests, however, that Gibson executed neither the union membership application nor the dues-checkoff form.

[11] See *Machinists v. Street*, 367 U.S. 740, 774 (1961) ("dissent is not to be presumed—it must affirmatively be made known to the union by the dissenting employee").

and the Local's bylaws, and honoring the Union's position "during any authorized strike or lockout."[12]

Since Gibson had the right, under Section 7 of the Act, to refrain from union membership beyond paying initiation fees and periodic dues,[13] Local 688 violated Section 8(b)(1)(A) when its agent threatened Gibson with loss of employment unless Gibson agreed to accept the obligations of membership set forth in the union membership application. E.g., *Electrical Workers IBEW Local 3 (General Electric)*, 295 NLRB 995 (1990).

Checkoff. A coercive statement by a union agent aimed at having an employee sign a dues-checkoff authorization violates the employee's Section 7 rights.

> Checkoff authorizations must be made voluntarily and an employee has the right under Section 7 of the Act to refuse to sign a checkoff authorization card. Any conduct, express or implied, which coerces an employee in his attempt to exercise this right clearly violates those Section 7 rights. *Boilermakers Local 374 (Construction Engineering)*, 284 NLRB 1382, 1390 (1987), enfd. 852 F.2d 1353 (D.C. Cir. 1988).

As discussed above, Local 688 Steward Brannam told Gibson that Gibson had to sign a checkoff authorization in order to continue to work at R & F.[14] Local 688 thereby violated Section 8(b)(1)(A). Id.

Was Brannam an agent of Local 688. Brannam is an employee of R & F and was Gibson's shop steward at the time Brannam told Gibson that Gibson had to join the Union and fill out the membership application and checkoff authorization. The Board has found shop stewards to be agents of their unions for various purposes.[15] In the case at hand Brannam, as a steward, was one of the Union's representatives in the plant,[16] and Brannam's duties as a steward included transmitting "messages and information" that originated with "the local union or its officers" to employees.[17] Thus employees could reasonably conclude that statements by Brannam concerning union membership and dues payments were expressions of the position of Local 688 itself. For purposes of the Act, therefore, Brannam was an agent of Local 688 at the time of the utterance at issue.[18]

C. The Union's Failure to Provide Gibson with Information

Gibson became an employee of R & F in September 1991. As we have seen, he did not become a member of Local 688 (in any sense of "member"). Brannam's demand that Gibson join the Union and sign a checkoff authorization occurred in January 1992. Not long after Brannam made his demand, Gibson sent a letter to the secretary-treasurer of Local 688 (which letter the Union did in fact receive) stating that Gibson declined "to join your union" and objecting "to the use of the money that I may be forced to pay to you for any purposes other than my pro rata share of the costs of collective bargaining, contract administration, and grievance adjustment for the unit of employees in which I am employed." The letter also demanded that the Union put Gibson's "rights under *Beck* . . . into effect immediately."

There have been no further communications (in either direction) between Gibson and Local 688.

The record does not specify whether Gibson ever paid any dues to Local 688. But the implication of the record as a whole is that, as of the date of the hearing, at least, Gibson had never become a member of Local 688 and had never made any payments of any kind to the Union.

According to the General Counsel, in light of Gibson's letter to the Local 688, the Union violated Section 8(b)(1)(A) of the Act by failing to provide Gibson "with an accounting disclosing

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[12] The membership application form (included in the record as G.C. Exh. 3) reads in full:

APPLICATION FOR MEMBERSHIP IN LOCAL UNION NO.__ affiliated with the International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America AFL–CIO

I, the undersigned, hereby apply for membership in the above Local Union and voluntarily choose and designate it as my representative for purposes of collective bargaining, hereby revoking any contrary designation. If admitted to membership, I agree to abide by the Constitution of the International as well as the Local Union Bylaws which are not in conflict with International laws and thereupon accept and assume the following oath of obligation: I pledge my honor to faithfully observe the Constitution and laws of the International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America. I pledge that I will comply with all the rules and regulations for the government of the International Union and this Local Union. I will faithfully perform all the duties assigned to me to the best of my ability and skill. I will conduct myself at all times in a manner as not to bring reproach upon my Union. I shall take an affirmative part in the business activities of the Union and accept and discharge my responsibilities during any authorized strike or lockout. I will never discriminate against a fellow worker on account of creed, color or nationality. I will at all times bear true and faithful allegiance to the International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America and this Local Union.

[13] *General Motors*; cf. *Teamsters Local 287 (Airborne Express),* 307 NLRB 980 (1992).

[14] The checkoff form reads, in part:

CHECKOFF AUTHORIZATION AND ASSIGNMENT

I, _____, hereby authorize my employer to deduct from my wages each and every month an amount equal to the monthly dues, initiation fees and uniform assessments of Local Union _____, and direct such amounts so deducted to be turned over each month to the Secretary-Treasurer of such Local Union for and on my behalf.

This authorization is voluntary and is not conditioned on my present or future membership in the Union.

[15] E.g., *Food & Commercial Workers Furriers Council (Associated Fur),* 280 NLRB 922 (1986); *Boilermakers Local 374,* supra; *Merillat Industries,* 252 NLRB 784, 786 fn. 10 (1980); *Boilermakers Local Lodge No. 5*, 249 NLRB 840 (1980); *Teamsters Local 745 (Transcon Lines),* 240 NLRB 537 (1979).

[16] The Local 688-R & F collective-bargaining agreement provides: "The Union shall be represented by a shop committee of employees to consist of a chief shop steward, shop secretary and shop stewards on the basis of one steward for each twenty-five . . . employees or major part thereof. . . ."

[17] The collective-bargaining agreement provides that:

> The authority of stewards . . . shall be limited to and shall not exceed the following duties or activities:
>
> . . . .
>
> 2. The transmission of such messages and information, which shall originate with, and are authorized by the local union or its officers, provided such messages and information:
>
> (A) Have been reduced to writing, or;
>
> (B) If not reduced to writing, are of a routine nature and do not involve work stoppages, slow downs, refusal to handle goods, or any other interference with the employer's business.

[18] See Sec. 2(13) of the Act; *Boilermakers Local 374*, supra; *Injected Rubber Products Corp*., 258 NLRB 687, 693 (1981).

those portions of dues expended on the nonrepresentational activities of Respondent Union."

In that regard, the Act "authorizes the exaction of only those fees and dues necessary to 'performing the duties of an exclusive representative of the employees in dealing with the employer on labor-management issues.'" *Beck*, quoting *Ellis v. Railway Clerks*, 466 U.S. 435, 448 (1984). Let us hypothesize, therefore, the following set of facts:

> 1. Representation of the employees in a bargaining unit by a union, with a union security provision in place.
>
> 2. A member of the bargaining unit who is not a member of the union advises the union that he or she is unwilling to pay for the union's nonrepresentational activities.
>
> 3. The union, threatening the employee with job loss, demands that the employee pay union dues.
>
> 4. At the time of the demand the union has not disclosed what percentage of the dues paid by its full members are expended on representational activities and what proportion are expended on nonrepresentational activities.

I will assume that under those hypothesized circumstances the union has violated Section 8(b)(1)(A) of the Act. See *Chicago Teachers Union Local 1 v. Hudson*, 475 U.S. 292, 310 (1986).

But here, once Gibson advised Local 688 that he did not want to become a member, the Union made no further demands on him. That being the case, I cannot conclude that Local 688 violated Section 8(b)(1)(A) by failing to provide the kind of accounting called for by the General Counsel.

I appreciate that some employees in Gibson's position might consider themselves under a kind of Sword of Damocles. That is, a collective-bargaining agreement then in effect contained a union-security provision that permitted the union to demand the discharge of any employee who had failed to pay "periodic dues." Since Gibson was not paying any dues whatsoever to Local 688, he might have considered himself in danger of being discharged by R & F.[19]

But to hold that Local 688 violated Section 8(b)(1)(A), I would have to conclude that the Union had an affirmative duty to notify Gibson that it would not require any dues from him until (at the earliest) it had provided the accounting that Gibson had demanded. While that would hardly be a horrendous burden to impose on unions, I am unable to so conclude. My conclusion, rather, is that for an employee in Gibson's position (which position includes the fact that Gibson was not paying any union dues), if the union makes no effort to collect any monies whatsoever from the employee after the employee has notified the union that he or she does not wish to become a member, lack of further communication from the union may not reasonably be deemed to be restraining or coercive.[20]

[19] In fact, of course, the Union could not lawfully seek Gibson's discharge until, at the earliest, it had provided the information that Gibson's letter had requested. See, e.g., *Chicago Teachers Union*, supra; *Electrical Workers IBEW Local 3 (General Electric)*, 299 NLRB 995 (1990).

CONCLUSIONS OF LAW

1. R & F is an employer engaged in commerce within the meaning of Section 2(2) and (6) of the Act.
2. Local 688 is a labor organization within the meaning of Section 2(5) of the Act.
3. Local 688 violated Section 8(b)(1)(A) of the Act when its agent communicated to Gibson that, in order to continue working at R & F: (a) Gibson would have to become a member of Local 688 and that such membership entailed obligations beyond paying periodic dues and initiation fees; and (b) Gibson would have to agree to dues checkoff.
4. Such unfair labor practices affected commerce within the meaning of Section 2(7) and Section 10(a) of the Act.
5. Local 688 did not otherwise violate the Act in any respect.

THE REMEDY

The accompanying recommended Order requires Local 688 to cease and desist its unlawful actions and to take certain affirmative action designed to effectuate the policies of the Act.

[Recommended Order omitted from publication.]

[20] The following is based on the credible testimony of a witness called by Local 688: An accounting firm retained by Local 688 had analyzed, for *Beck* purposes, the Union's 1988 expenditures. That was the most recent *Beck* analysis available to Local 688 as of the date of the demand Gibson made in January 1992. The Union did not provide Gibson with that analysis (or with information based on that analysis). In April 1992 Local 688 asked the accounting firm to prepare another *Beck* analysis of the Union's expenditures, this time in respect to the Union's expenditures for the year 1991. The firm submitted its analysis to Local 688 in May 1992. The Union makes no claim that as of the date of the hearing the Union had submitted that analysis (or information based on that analysis) to Gibson. Gibson's counsel objected to that testimony. In retrospect I should have sustained that objection on the ground that the testimony was irrelevant.